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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 52**

**[FAR Case 2012-016; Docket 2012-0016; Sequence 1]**

**RIN: 9000-AM50**

**Federal Acquisition Regulation; Defense Base Act**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012-016 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2012-016." Select the link "Submit a Comment" that corresponds with "FAR Case 2012-016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-016" on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7<sup>th</sup> Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2012-016, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2012-016.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are proposing to revise the FAR to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

## **II. Discussion and Analysis**

The Defense Base Act of 1941, codified at 42 U.S.C. 1651, et seq., extended the federal workers' compensation protections provided by the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901, et seq.) to the following employment outside of the United States: work for private employers on United States military bases, generally; work on public work contracts - where "public work" is not limited to construction, but includes service contracts - with a United States Government agency; work on contracts approved and funded by the U.S. under the Foreign Assistance Act; and work for American employers providing welfare or similar services for the benefit of the Armed Services, e.g., the United Service Organizations (USO). It is intended to provide disability compensation and medical benefits to covered employees for work-related injuries, and death benefits to eligible survivors of employees whose deaths are work-related. Recent experience and anticipated contingency contracting efforts require the clarification of

the responsibilities of contractors and subcontractors under the LHWCA to purchase workers' compensation insurance or to qualify as a self-insurer; to submit a timely, written report to the Department of Labor (DOL) in the event of an employee's injury or death; to make timely payment of all compensation due for disability or death, and to submit a timely, written report of such payment to the DOL; and to adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act, as extended by the Defense Base Act.

Therefore, this action proposes to revise FAR clause 52.228-3, Workers Compensation Insurance (Defense Base Act) to clarify the responsibilities of contractors under the Defense Base Act, including the requirement to include flow down of this clause to all subcontractors to which the Defense Base Act applies.

This rule reflects statutory and DOL requirements, and does not impose additional burdens beyond those requirements.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the revisions to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), merely clarify the existing requirements set forth in the Defense Base Act of 1941 (DBA), codified at 42 U.S.C. § 1651, et seq.

However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

The objective of the rule is to amend FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act) to clarify the responsibilities of contractors under the Defense Base Act, including the requirement to include flow

down of this clause to all subcontractors to which the Defense Base Act applies.

DoD, NASA and GSA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the revisions to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), merely clarify the existing requirements set forth in the Defense Base Act of 1941 (DBA), codified at 42 U.S.C. § 1651, et seq.

The proposed rule imposes no reporting, recordkeeping, or other information collection requirements than what are already required to be reported to the Department of Labor as per the Defense Base Act. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012-016) in correspondence.

## **V. Paperwork Reduction Act**

The proposed rule does not contain any new information collection requirements that require the approval of the

Office of Management and Budget under the Paperwork  
Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 52**

Government procurement.

Dated: March 14, 2013.

Laura Auletta,  
Director,  
Office of Governmentwide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

**PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR part 52 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Revise section 52.228-3 to read as follows:

**52.228-3 Workers Compensation Insurance (Defense Base Act).**

As prescribed in 28.309(a), insert the following clause:

WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) ( **[INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER]** )

(a) The Contractor shall—

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;

(2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203);

(3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232);



(4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419);

(5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251);

(6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234);

(7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c) and (g), 20 CFR 702.234 and 702.235); and

(8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

(b) The actions set forth under paragraphs (a)(2) through (a)(8) may be performed by the contractor's agent or insurance carrier.

(c) For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lbdba.htm>.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d) in all subcontracts to which the Defense Base Act applies.

(End of clause)

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